

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B04  
PLR-108241-08  
Date:  
June 13, 2008

TY:

FP =  
DS =  
US Corp1 =  
Year1 =  
Country1 =  
Amount1 =  
Amount2 =

Dear :

This replies to a letter dated March 28, 2007, in which FP, DS, and US Corp1 request extensions of time under Treas. Reg. § 301.9100-3 to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3). The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as a part of the audit process.

### Facts

FP, a publicly listed Country1 corporation, owned DS and US Corp1. Both DS and US Corp1 are domestic corporations. DS was the parent of an affiliated group which filed consolidated returns. FP had purchased the shares of US Corp 1 in Year1 from an unrelated party for cash.

In order that US Corp1 would be part of the DS affiliated group, FP contributed the shares of US Corp1 to DS in exchange for one share of DS and notes issued by DS.

In addition, on the same day, DS distributed cash to FP in the amount of Amount1.

DS had current earnings and profits for the tax year ending December 31, Year1, the year of the sale in the amount of Amount2. DS did not have any accumulated earnings and profits for the tax year ending December 31, Year1. US Corp1 had no current or accumulated earnings and profits for the tax year ending December 31, Year1.

For federal income tax purposes, FP, DS, and US Corp1 claim that the DS acquisition of the stock of US Corp1 is an exchange governed by section 351, to the extent no consideration, other than the share of DS stock, was given for the stock of US Corp1. To the extent FP received notes issued by DS as consideration for the stock of US Corp1, FP, DS, and US Corp1 assert that the transaction is governed by section 304. Under section 304, the amount of the notes may be treated in part as a dividend to FP, and in part as a return of capital and capital gain.

For federal income tax purposes, FP and DS claim that the cash distributed to FP by DS is a return of capital to the extent it exceeded distributions (if any) of DS's current earnings and profits, and to the extent of FP's basis in DS. Section 301(c)(2).

Although FP claims that neither DS nor US Corp1 was a US Real Property Holding Corporation (US RPHC) any time during the five year period ending with the date of the transactions, FP did not request statements pursuant to 1.897-2(g) from US Corp1 and DS that US Corp1 and DS were not US RPHCs. Accordingly, neither US Corp1 nor DS provided statements to FP that they were not US RPHCs, and that withholding was not required.

FP, DS and US Corp1 now seek relief under the provisions of Treas. Reg. §§ 301.9100-1 and -3 for FP to request the applicable statements from US Corp1 and DS, and for US Corp1 and DS to file the applicable notices late as required by Treas. Reg. §1.897-2(h).

### Discussion

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I. Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections. Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this

section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the statement and notice fall within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant FP, DS, and US Corp1 extensions of time, provided that FP, DS, and US Corp1 satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that FP, US Corp1 and DS satisfy Treas. Reg. § 301.9100-3(a). Accordingly, pursuant to Treas. Reg. § 301.9100-1 and Treas. Reg. § 301.9100-3, FP, US Corp1 and DS are granted an extension of time until 60 days from the date of this ruling letter to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), 1.897-2(h), and 1.1445-2(c)(3) with respect to the distribution that occurred in Year1.

The granting of an extension of time is not a determination that FP, DS, and US Corp1 are otherwise eligible to comply with the statement and notice requirements. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be attached with the statement and the notice mailed to the IRS.

This ruling is directed only to the taxpayer who requested it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Bailey  
Assistant to the Branch Chief  
(International, Branch 4)